



# RIGHTS OF ACCUSED, SUSPECTS AND PRISONERS AS VICTIM OF CRIME UNDER CRIMINAL JUSTICE SYSTEM OF INDIA

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## ABSTRACT

The primary objective of Criminal Justice System is to protect the rights of individual including suspects, accused and prisoners. This class does not become non-person merely as they are in conflict with law. In India, the criminal law provides compensation to the victims and their dependants only in a limited manner. The legislature has taken progressive measures by amending the Code of Criminal Procedure to ameliorate the woes of victims of crime and providing them comprehensive scheme for compensatory justice.

Earlier, it was policy of the Court, under the jurisdiction conferred by Article 32 and Article 226 of the Constitution not to pass an order for the payment of money if such an order was in the nature of compensation consequential upon the deprivation of a fundamental right. The Court's attitude was that if a public servant committed a wrongful act under the powers delegated to him for discharge of sovereign function of the State, no legal action for damage could be taken against him or his employer, the Government. The Constitution of India is protector of basic human rights. However, this position has been substantially altered by the apex court by its various decisions. In course of time, the judicial activism in India has given new dimension to Article 32 and 226 of Constitution. Apex court in India aptly moulded, fabricated and develops Compensatory Jurisprudence and expands its wing to award compensation to the victim crime, which includes accused, suspects and prisoners under Criminal Justice System. Now, the defense of sovereign immunity being inapplicable and alien to the concept of guarantee of fundamental rights, justifies award of monetary compensation.

**KEY WORDS:** Rights of accused, prisoners, victim of crime, criminal justice system, compensation, compensatory jurisprudence.

## Introduction:

*The victimization of the family of the convict may well be a reality and is regrettable. It is a weakness of our jurisprudence that the victims of the crime, and the distress of the dependants of the prisoner, do not attract the attention of the law. Indeed, victim reparation is still the vanishing point of our criminal law! This is a deficiency in the system, which must be rectified by the Legislature.<sup>1</sup>*

Crime takes not only physical but also financial and emotional tolls on its victims. Hence, it is necessary to treat victims with compassionate and respect their dignity. Victim of crimes are entitled to prompt redress for the harm that they have suffered, through access to the criminal justice system, reparation and services to assist their recovery.

Almost in all the civilized society, with the increasing complexity of society and the evolution of system of justice, the State has consistently assuming a dominant role in the justice dispensing process. In modern era, State finally took over the responsibility for the investigation of the crime, the prosecution of the accused, adjudication and enforcement of the sentencing through different State agencies. The victim of crime has afforded fewer opportunities of direct participation in administration of justice process. The State was assumed to be representing the interests of the victim and accordingly no need was perceived for direct victim involvement in the proceedings.

Police and Prison atrocities are common in India. Most of the Indians who become prey of these public authorities are illiterate, poor, and downtrodden. The instances of police and prison atrocities are not less in India. Till the early seventies, it was the policy of the Court, under the jurisdiction conferred by Article 32 of the Constitution, not to pass an order for the payment of money in the form of compensation. The Court's attitude was that if public servants/authorities committed a wrongful act under the powers delegated to them for discharge of sovereign function of the State, no legal action for damage could be taken against him or his employer i.e. Government.

*Kasturi Lal Ralia Kam Jain v. State of Uttar Pradesh<sup>2</sup>* is the leading case law on this point. The Supreme Court recognizes a material distinction between acts committed by the servants employed by the State where such acts are referable to the exercise of sovereign powers delegated to public servants, and acts committed by public servants, which are not referable to the delegation of any sovereign powers. If a public servant commits a tortious act and it gives rise to a claim for damages, the question to ask is: was the tortious act committed by the public servant in discharge of statutory functions, which are referable to, and ultimately based on, the delegation of the sovereign powers of the State to such public servant? If the answer is in the affirmative, the action for damages for loss caused by such tortious act will not lie. On the other hand, if the tortious act has been committed by a public servant in discharge of duties assigned to him not by virtue of the delegation of any sovereign power, an action for damages would lie. The act of the public servant committed by him during the course of his employment is, in this category of cases, an act of a servant who might have been

employed by a private individual for the same purpose.

However, in the same case, on Supreme Court aptly added that it is time that the Legislatures in India shall seriously consider whether they should not pass legislative enactments to regulate and control their claim from immunity in cases like this on the same lines as has been done in England by the Crown Proceedings Act, 1947. It will be recalled that this doctrine of immunity is based on the common law principle that the King commits no wrong and that he cannot be guilty of personal negligence or misconduct, and as such cannot be responsible for the negligence or misconduct of his servants. Another aspect of this doctrine was that it was an attribute of sovereignty that a State cannot be sued in its own courts without its consent. This legal position has been substantially altered by the Crown Proceedings Act, 1947. The genuine point in mentioning this Act is to indicate that the doctrine of immunity which has been borrowed in India in dealing with the question of the immunity of the State in regard to claims made against it for tortious acts committed by its servants, was really based on the common law principle which prevailed in England; and that principle has now been substantially modified by the Crown Proceedings Act.

However, in course of time, the judicial activism in India has given a new dimension to Article 32 as well 226 and the higher judiciary expands its wing to award compensation to the victim of police and prison atrocities.

It is worth mentioning and relevant to note a Latin maxim- *Ubi quis delinquit ibi puniretur* which means let a man/person be punished when he commits the offence. Hence, though the person committing wrong would be anyone, he should be punished and if the person is King/Government the compensation shall be granted to the victim to be paid by the Government.

It is significant to refer in this connection the decision in *Joginder Kaur v. The Punjab State<sup>3</sup>*, wherein it has been observed that:-

"In the matter of liability of the State for the torts committed by its employees, it is now settled law that the State is liable for tortious acts committed by its employees in the course of their employment".

In *State of Rajasthan v. Ms. Vidhyawati<sup>4</sup>*, it has been held that:

"..... there should be no difficulty in holding that the State should be as much liable for tort in respect of a tortious act committed by its servant within the scope of his employment and functioning as such as any other employer. The immunity of the Crown in the United Kingdom was based on the old feudalistic notions of Justice, namely, that the King was incapable of doing a wrong, and, therefore, of authorizing or instigating one, and that he could not be sued in his own courts. In India, ever since the time of the East India Company, the sovereign has been held liable to be sued in tort or in contract and the Common Law immunity never operated in India.....".

The question of violation of the fundamental right to life and personal liberty under Article 21 of the Constitution was considered in depth by the Court for the first time in the case of *Khatri (II) v. State of Bihar*, and *Khatri (IV) v. State of Bihar*<sup>6</sup>, famously known as *Bhagalpur Blinding Cases*. In this case/s the petitioners complain that after arrest, whilst under police custody, they were blinded by the members of the police, force, acting not in their private capacity, but as police officials and their fundamental right to life guaranteed under Article 21 was therefore violated and for this violation, the State is liable to pay compensation to them.

In the *Bhagalpur Blinding case*<sup>7</sup>, speaking for the Bench, posed the following question while considering the relief that could be given by a Court for violation of Constitutional rights guaranteed in Article 21 of the Constitution :-

*"...but if life or personal liberty is violated otherwise than in accordance with such procedure, is the Court helpless to grant relief to the person who has suffered such deprivation? Why should the court not be prepared to forge new tools and devise new remedies for the purpose of vindicating (justify, prove correct) the most precious of the precious fundamental right to life and personal liberty"*

The subsequent order in *Bhagalpur Blinding case*<sup>8</sup> held that:

*"When a Court trying the writ petition proceeds to inquire into the violation of any right to life or personal liberty, while in police custody, it does so, not for the purpose of adjudicating upon the guilt of any particular officer with a view to punishing him but for the purpose of deciding whether the fundamental right of the petitioners under Article 21 has been violated and the State is liable to pay compensation to them for such violation"*.

In *Rudul Sah v. State of Bihar*<sup>9</sup>, the petitioner therein approached Supreme Court under Article 32 of the Constitution alleging that though he was acquitted by the Sessions Court on 3-6-1968, he was released from jail only on 6-10-1982, after 14 years, and sought compensation for his illegal detention. This writ petition discloses a sordid and disturbing state of affairs. The Supreme Court while recognizing that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of Courts, civil and criminal, raised for consideration the important question as to whether in the exercise of its jurisdiction under Article 32, this Court can pass an order for payment of money, as compensation for the deprivation of a fundamental right. This Court answered the question thus while awarding compensation:-

*"Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation..... The right to compensation is some palliative (painkilling, analgesic) for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilization is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers"*.

In this case, compensation has been awarded to the petitioner Rudul Sah. The Supreme Court directed Bihar Government as an interim measure, to pay to the petitioner a further sum of Rs. 30,000/- in addition to the sum of Rs. 5,000/- already paid by it.

The ratio of Rudul Sah was followed in *Bhim Singh v. State of J & K*<sup>10</sup>, and *Peoples' Union for Democratic Rights v. Police Commissioner, Delhi Police Headquarters*<sup>11</sup>.

In *Sebastian M. Hongray v. Union of India (I)*<sup>12</sup>, it was indicated that in a petition for writ of habeas corpus, the burden was obviously on the respondents to make good the positive stand of the respondents in response to the notice issued by the Court by offering proof of the stand taken, when it is shown that the person detained was last seen alive under the surveillance, control, and command of the detaining authority.

In *Sebastian M. Hongray v. Union of India (II)*<sup>13</sup>, exemplary costs were awarded on failure of the detaining authority to produce the missing persons, on the conclusion that they were not alive and had met an unnatural death. The award was made in *Sebastian M. Hongray-II* apparently following *Rudul Sah*, but without indicating anything more. The writ petition was awarded with exemplary costs (to pay Rs. 1 Lakh to both the victims).

In *Bhim Singh, MLA v. State of J & K*<sup>14</sup>, the petitioner, a MLA was arrested and detained in police custody and deliberately prevented from attending Session of Legislative Assembly. The Supreme Court held that the Constitutional rights of Shri Bhim Singh were violated with impunity. The Court further observed that

though the petitioner is now not in detention, there is no need to make any order to set him at liberty, but he must be compensated suitably and adequately for illegal arrest and detention.

The Court has also made it clear that in the light of the decisions of this Court in *Rudul Sah* and *Sebastian Hongray (supra)*, the Supreme Court has right to award monetary compensation by way of exemplary cost or otherwise. It is held that when a person comes to Supreme Court with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his Constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases, the Supreme Court has the jurisdiction to compensate the victim by awarding suitable monetary compensation. The Court considered this case as an appropriate case and directed to State to pay to Shri Bhim Singh a sum of Rs. 50,000/- as compensation.

In *M. C. Mehta v. Union of India*<sup>15</sup>, a Constitution bench of this Court while considering the question whether compensation can be awarded in a petition under Article 32, observed thus:

*"We must hold that Article 32 is not powerless to assist a person when he finds that his fundamental right has been violated. He can in that event seek remedial assistance under Article 32. The power of the court to grant such remedial relief may include the power to award compensation in appropriate cases. We are deliberately using the words 'in appropriate cases' because we must make it clear that it is not in every case where there is a breach of a fundamental right committed by the violator that compensation would be awarded by the court in a petition under Article 32. The infringement of the fundamental right must be gross and patent, that is, incontrovertible and ex facie glaring and either such infringement should be on a large scale affecting the fundamental rights of a large number of persons, or it should appear unjust or unduly harsh or oppressive on account of their poverty or disability or socially or economically disadvantaged position to require the person or persons affected by such infringement to initiate and pursue act in the civil courts"*.

The case titled *People's Union for Democratic Rights v. Police Commissioner, Delhi Police Headquarter*<sup>16</sup>, is an unfortunate case where the police collected people and took them to the police station for doing some work. They were asked to work without labour charges. On demand they were beaten and it appears that one of them Ram Swaroop succumbed to the injuries and the body has also been disposed of and others were beaten blatantly.

It was held by the Supreme Court that the State is liable to pay compensation and directed that the family of Ram Swaroop who was dead will be paid R 50,000/- as compensation, other victims also paid compensation.

The similar principle is again recognized by the Apex Court in *Saheli, a Women's Resources Centre, Through Ms. Nalini Bhanot v. Commissioner of Police, Delhi*<sup>17</sup>. These writ petitions have been filed by the Women's and Civil Rights Organization known as SAHELI, a Women's Resources Centre on behalf of two Women Maya Devi and Kamlesh Kumari who have been residing in one room tenement each on the ground floor of house No. 408/ 5/ A L Gali No. 29, Anand Parbat and were severely beaten up by the alleged landlord in collusion with the S. H. O., Shri Lal Singh and the police of Anand Parbat Police Station consequently a 9 years old child died due to beating by the Police Officer. The Supreme Court reiterating its earlier decision on the subject (all discussed above), held that Delhi Administration is responsible and directed to pay compensation to Kamlesh Kumari, mother of the deceased, Naresh a sum of Rs. 75,000/-.

In *State of Maharashtra v. Ravikant S. Pati*<sup>18</sup>, the appeal has been filed by the State of Maharashtra against an order of the High Court of Bombay directing an Inspector of Police, to pay an amount of Rs. 10,000/- by way of compensation to the respondent herein, an undertrial prisoner, on the ground that the said police officer was guilty of violation of fundamental right of an undertrial prisoner under Article 21 of the Constitution of India. It further directed that an entry should be made in his service record. An undertrial prisoner was handcuffed and paraded on streets under the guise that he was suspected to be involved in a murder case.

The Supreme Court upheld the judgment of the High Court directing a payment of compensation but held that the police officer was not personally liable as he acted as an official. Hence, the compensation of Rs. 10,000/- as awarded by the High Court shall be paid by the State of Maharashtra. However, the Supreme Court held that the concerned authorities may if they think it necessary hold an enquiry and then decide whether any further action has to be taken against Inspector of Police.

In *Nilabati Behara alias Lauti Behera (through the Supreme Court Legal Aid Committee) v. State of Orissa*<sup>19</sup>, a letter dated 14-9-1988 sent to Supreme Court by Smt. Nilabati Behera alias Lalita Behera- was treated as a Writ Petition under Article 32 of the Constitution for determining the claim of compensation made therein consequent upon the death of petitioner's son Suman Behera, aged about 22 years, in police custody due to beating. On the basis of evidence and medical report it was found that the deceased had died due to beating and the Supreme

Court awarded Rs. 1,50,000/- as compensation to the deceased's mother.

The Supreme Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings.

J. S. Verma J., (as he then was) spelt out the following principles in *Nilabati Behara (supra)* case:

*“award of compensation in a proceeding under Article 32 by this Court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort. Enforcement of the Constitutional right and grant of redress embraces award of compensation as part of the legal consequences of its contravention..... The defence of sovereign immunity being inapplicable and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the Constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution”.*

The higher judiciary in India has authorized under Articles 32, 142 (and 226) of the Constitution to award compensation to the victim of criminal justice system. The principle of sovereign immunity is not applicable in the cases of violation of fundamental rights. This right of victim of criminal justice system is in addition to claim compensation in private law in action based on tort.

However, in *Dhananjay Sharma v. State of Haryana*<sup>20</sup>, the Supreme Court refused compensation where the petitioner had exaggerated the incident and had indulged in falsehood. The Supreme Court held:

*“Since, from the Report of the CBI and our own independent appraisal of the evidence recorded by the CBI we have come to the conclusion that Shri Dhananjay Sharma and Sushil Kumar had been illegally detained by respondents 3 to 5 from the afternoon of 15-1-94 to 17-1-94, the State must be held responsible for the unlawful acts of its officers and it must repair the damage done to the citizens by its officers for violating their indivisible fundamental right of personal liberty without any authority of law in an absolutely high-handed manner. We would have been, therefore, inclined to direct the State Government of Haryana to compensate Dhananjay Sharma and Sushil Kumar but since Sushil Kumar has indulged in falsehood in this Court and Shri Dhananjay Sharma, has also exaggerated the incident by stating that on 15-1-94 when he was way laid along with Sushil Kumar and Shri S. C. Puri, Advocate, two employees of respondents 6 and 7 were also present with the police party, which version has not been found to be correct by the CBI, they both have disentitled themselves from receiving any compensation, as monetary amends for the wrong done by respondents 3 to 5, in detaining them. We therefore do not direct the payment of any compensation to them”.*

In celebrated case of *D. K. Basu v. State of West Bengal*<sup>21</sup>, the Supreme Court again considered exhaustively the question and held that monetary compensation should be awarded for established infringement of fundamental right guaranteed under Article 21. This Court reiterated the doctrine enshrined under the legal maxim *ubi jus ibi remedium* means there is no wrong without a remedy. The law wills that in every case where a man is wronged and endamaged, he must have a remedy.

Some punitive provisions are contained in the Indian Penal Code, 1860 that seeks to punish violation of right to life. Section 220 Indian Penal Code, 1860 provides for punishment to an officer or authority that detains or keeps a person in confinement with a corrupt or malicious motive.

Sections 330 and 331 of Indian Penal Code, 1860 provide for punishment of those who inflict injury or grievous hurt on a person to extort confession or information concerning commission of an offence. Illustrations (a) and (b) to Section 330 make a police officer guilty of torturing a person in order to induce him to confess the commission of a crime or to induce him to point out places where stolen property is deposited.

Section 330 directly makes torture during interrogation and investigation punishable under the Indian Penal Code. As seen in foregoing discussion, the evidence and witnesses against the police personnel are rarely available and those who are available, unwilling to give witness in Court due to fear and threat. These statutory provisions are, therefore, inadequate to repair the wrong done to the citizen.

Again only prosecuting the police personnel does not solve the problem. The victim should be compensated monetarily. Thus, to sum up, it is now a well

accepted proposition that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts.

In *Kaushalya w/o Rohidas Dighe v. State of Maharashtra*<sup>22</sup>, the Bombay High Court has dealt with the case of wife's claim for compensation whose husband was died while in judicial custody. The Bombay High Court held that petitioner was entitled to be compensated for failure of the State to protect deceased who was in its custody. By holding the Government responsible for the negligence in duty by the constables, the Court directed to State of Maharashtra to pay compensation of Rs. 1 Lakh as compensation.

The Supreme Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings.

Section 250 of the Code empowers the Magistrate to award compensation to the accused when there was no reasonable ground for making accusation against him. The object of the Section is not to punish the complainant, but, by a summary order, to award some compensation to the person against whom, without any reasonable ground, the accusation is made, leaving it to him to obtain further redress against the complainant, if he seeks for it, by a regular civil suit or criminal prosecution<sup>23</sup>.

Section 95 of the CPC is analogous to Section 250. The harassed person who gets compensation can obtained further redress by proceedings under Section 211, Indian Penal Code, 1860 or by bringing a civil suit<sup>24</sup>.

#### **Position under International Instruments:**

There are various International and Regional instruments, which are dealing with rights like Right to Compensation for the violation of fundamental and human rights. The International Covenant on Civil and Political Rights, 1966 has laid down under Article 9(5) about this right.

**“Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation”.**

- Article 9(5) of International Covenant on Civil and Political Rights, 1966

**“Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the Constitution or by law”.**

- Article 8 of Universal Declaration of Human Rights, 1948

International Covenant on Civil and Political Rights, 1966 inter alia under Article 9 prohibits for illegal arrest and detention. Similarly, it provides that if there is unlawful arrest or detention is effected by the law enforcement authorities, the person who so arrested or detain shall have right to be compensated at the instance of State.

The UN General Assembly recognized the right of victims of crimes to receive compensation by passing a resolution titled **“Declaration on Basic Principles of Justice for Victims and Abuse of Power, 1985”**. The Resolution contained the following provisions on restitution and compensation:

#### **Restitution:**

8. Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.

9. Governments should review their practices, Regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.

10. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.

11. Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government

successor in title should provide restitution to the victims.

### Compensation:

12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:

(a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;

(b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.

13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm."

The UN General Assembly passed a resolution titled *"Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005"* which deals with the rights of victims of international crimes and human rights violations.

However, it is pertinent to note that the right to compensation is not specifically guaranteed under the Indian Constitution. India at the time of ratification of the Covenant had expressly made a reservation in this regard by stating that under the Indian legal system, there is no enforceable right to compensation for persons claiming to be victims of unlawful arrest or detention against the State. But, the reservation has lost its relevance in view of the decisions of the Courts which have held that the suit for compensation against the State in such cases is maintainable and the State has no right to take any action which may deprive the citizen of the enjoyment of his basic fundamental rights except in accordance with procedure prescribed under law, which is reasonable, fair and just.

### The Code of Criminal Procedure and Victim's Right to Compensation:

The principle of compensating victims of crime has for long been recognized by the law though it is recognized more as a token relief rather than part of a punishment or substantial remedy. In the Code of Criminal Procedure, there was only one provision under Section 357 where court could, while awarding sentence, award compensation. However, the Code of Criminal Procedure was amended to bring in various victim friendly provisions, such as inclusion of definition of victim, victim's right to engage his advocate and more significantly providing Victim Compensation Scheme and others.

### Compensation to Victims, Section 357:

Section 357 (1) and Section 357 (3) Cr.P.C. vest power in the trial court to award compensation to victims of crime whereas similar power is vested in the Appellate and Revisional Court under sub-section (4). The Court may appropriate whole or any portion of the fine recorded from the offender to be paid as compensation to the victim of crime. This compensation may be for costs, damage, injury suffered, loss caused due to death, or monetary loss incurred due to theft or destruction of property, etc. Sub-section (3) empowers the court, in its discretion, to order the accused to pay compensation to victim of his crime, even though no fine has been imposed on him<sup>25</sup>.

Section 357-A has been inserted after the 2008 Amendment which provides for the Victim Compensation Scheme-

1. Every State government in co-ordination with the Central Government, shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependants who have suffered loss or injury as a result of the crime and who require rehabilitation.

2. Whenever recommendation is made by the Court for compensation, the District Legal Services Authority or the State Legal Services Authority, as the case may be, shall decide the quantum of compensation to be awarded.

3. If the trial court, at the conclusion of trial is satisfied, that the compensation awarded under Section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

4. Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victims or his dependants may make an application to the State or the District Legal Services Authority for the award of compensation.

5. On receipt of such recommendation or on the receipt of application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry, award adequate compensation after completing the enquiry within 2 months.

6. The said authority, to alleviate the suffering of the victim, may order for immediate first aid facility or medical benefits to be made available free of cost on the certificate of police officer not below the rank of officer in charge of the police station or a magistrate of the area concerned, or any other interim relief as the authority may deem fit."

The scheme contained in the Section is indeed a progressive measure to ameliorate the woes of crime victims and providing them **restorative justice**.

The Code also provides compensatory relief to victims of unlawful arrest or detention by police without sufficient cause<sup>26</sup>.

Where an accused is convicted of a non-cognizable offence on a complaint, the court may order him to pay costs to the complainant or in default, suffer simple imprisonment for a period not exceeding thirty days<sup>27</sup>.

Section 357-B and Section 357-C have been inserted after the 2013 Amendment which provides for-

Section 357-B: The compensation provided under Section 357-A shall be in addition to the payment of fine to the victim under Section 326-A or Section 376-D of the Indian Penal Code.

Section 357-C: All hospitals, whether public or private, run by Central Government or State Government, local bodies or any other person, shall immediately provide the first-aid or medical treatment, free of cost, to the victim of any offence under Section 326-A, Section 376, Section 376 A to E of the Indian Penal Code, and shall immediately inform the police of such incident.

### Conclusion:

Commiserating with the plight of victims of State atrocities under Administration of Criminal Justice and to avail the advantage of requirement to do justice under the Constitution of India to safeguard human rights, the Supreme Court and High Courts have fabricated and moulded the practice of awarding compensatory remedies not only in terms of money but also in terms of appropriate reliefs and remedies. Medical Justice to Bhagalpur Blind Victims, Compensatory Justice to Bhopal Gas disasters victims, rehabilitative justice to the communal violence victims, compassionate justice for prison and police atrocity victims are the prominent examples laid down by apex Court. The above discussion is illuminative of new trend of using Constitutional jurisdiction to do justice to victims of crime by different wings of criminal justice system. The appropriate amendments to the Code of Criminal Procedure acknowledge the steps taken by the legislature to commensurate the ideology laid down by the apex court. This is nothing but recognizing the obligation of the State to protect basic rights and to deliver justice to victims of crimes fairly and speedily.

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2. Protection of Human Rights Act, 1993
3. The Code of Criminal Procedure, 1973
4. The Constitution of India Act, 1950
5. The Indian Penal Code, 1860

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1. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005
2. Declaration on Basic Principles of Justice for Victims and Abuse of Power, 1985
3. International Covenant on Civil and Political Rights, 1966
4. Universal Declaration of Human Rights, 1948

### Footnotes:

1. Rattan Singh v. State Of Punjab, AIR 1980 SC 84, (1979) 4 SCC 719
2. AIR 1965 SC 1039
3. 1968 Acc CJ 28
4. 1962 Supp (2) SCR 989

5. AIR 1981 SC 928
6. 1981 (2) SCC 493
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8. Khatri (IV) v. State of Bihar-1981 (2) SCC 493
9. 1983 (4) SCC 141
10. 1985 (4) SCC 677
11. 1989 (4) SCC 730
12. (1984) 1 SCR 904: AIR 1984 SC 571
13. (1984) 3 SCR 544: AIR 1984 SC 1026
14. (1985) 4 SCC 677
15. (1987) 1 SCC 395
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17. AIR 1990 SC 513
18. (1991) 2 SCC 373
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20. 1995 (3) SCC 757
21. 1997 (1) SCC 416
22. 2000 ALLMR (CRI) 373
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24. Sub-Section 5 and Beni Madhub, *supr*
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26. Section 358 (1) of the CrPC
27. Section 359 (1) of the CrPC